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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. AUTUMN MARIE BARNES, Defendant and Appellant.	D071301 (Super. Ct. No. SCD257049)

APPEAL from a judgment of the Superior Court of San Diego County, Frederick Maguire, Judge. Affirmed.

Ashley N. Johndro, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Anthony Da Silva, Deputy Attorneys General, for Plaintiff and Respondent.

Autumn Marie Barnes received fraudulent checks in amounts totaling more than $950, and subsequently pleaded guilty to one count of grand theft of personal property in violation of Penal Code section 487, subdivision (a). The superior court sentenced Barnes to formal probation for a term of five years, and imposed various terms and conditions of probation. Among others, the court required Barnes to (1) submit to warrantless searches of her person, vehicle, residence, property, personal effects, computers and recordable media (the Fourth Amendment waiver); (2) attend and successfully complete anti-theft and cognitive behavioral counseling if directed by her probation officers (the counseling condition); and (3) obtain her probation officer's consent before leaving San Diego County or moving out of state (the travel condition).

On appeal, Barnes asserts all three conditions are constitutionally overbroad and the counseling condition and the Fourth Amendment waiver—both generally and specifically due to its inclusion of computers and recordable media—are invalid as unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). The People assert Barnes forfeited her constitutional overbreadth arguments and her contentions concerning the inclusion of computers and recordable media in the Fourth Amendment waiver by failing to object on those grounds at the sentencing hearing.

As set forth herein, we conclude the conditions are reasonable under *Lent*, Barnes forfeited her constitutional overbreadth arguments, and, regardless, the conditions are appropriately tailored to legitimate governmental interests. We therefore affirm the judgment of the superior court.

FACTUAL AND PROCEDURAL BACKGROUND

Barnes's sister-in-law, Marquita Wilson, was the office manager for a non-profit program in San Diego County called Family Forward in late 2012. The Family Forward program provides services to children with a mental health diagnosis at risk of losing their in-home placement. As part of the program, Family Forward utilizes a flex fund to provide training, resources, outings, and financial assistance to the children and their families as needs arise. Mental Health Systems (MHS) manages the Family Forward program and the County of San Diego provides the flex funds through Medi-Cal and other sources.

In her role as office manager, Wilson coordinated payments between the Family Forward program and MHS. Wilson corresponded with vendors for outside services, such as training or home repairs, filled out check request forms for internal expenses, such as food or supplies for events, and tracked the related invoices. She did not have the authority to approve funding for vendors herself, but would routinely generate the paperwork necessary for check requests, which a supervisor would then review and authorize.

In December 2012, Family Forward's program manager discovered unusually high expenditures for training in the monthly budget review. She and an assistant program manager examined the related records and discovered three checks for several thousand dollars each, as well as the associated invoices, that neither of them had approved. They then looked into the records for previous months and found a number of additional suspicious expenditures. They pulled the invoices for the suspicious transactions, and

discovered at least some of them contained signatures that did not look authentic. They raised these concerns internally, and MHS eventually put together a list of 25 vendors, or individuals, that had received unauthorized checks from Family Forward over the course of the previous few years.

MHS also searched Wilson's work computer and found an electronic copy of an invoice that looked similar to a number of the invoices related to the suspicious checks. They found what appeared to be a fraudulent invoice for Barnes and discovered there had been at least six fraudulent checks made out to Barnes, with a total value of more than $45,000. In addition, MHS found e-mails indicating Wilson had a personal relationship with most of the individual payees on the fraudulent checks.

MHS provided the list of unauthorized checks and vendors, along with supporting documentation, to the police department in early 2013. Two of the checks made out to Barnes had stamps on the back associated with Bank of America, so the police served a warrant on Bank of America and obtained documents indicating four of the six checks payable to Barnes were negotiated into an account held by Barnes. As a result, the People charged Barnes with one count of conspiracy to commit the crime of grand theft and one count of grand theft of personal property. Before trial, she pleaded guilty to the charge of grand theft in exchange for the dismissal of the conspiracy charge. As part of

the plea agreement, she stipulated to the facts as set forth in the preliminary examination transcripts and agreed to a *Harvey*[1] waiver.

The probation department interviewed Barnes and she claimed Wilson deposited funds into her account for her to use for school and other living expenses and she was not aware the funds had been fraudulently obtained. The probation department reported Barnes did not have any previous criminal history or contact with law enforcement, but concluded there was no question she was aware of the fraudulent funds based on the large sums deposited into her account. The probation department recommended formal probation for a term of five years, subject to a number of conditions, including: condition 6(l), which required Barnes to obtain her probation officer's consent before leaving San Diego County and to obtain the court and probation officer's written consent before moving out of the state;[2] condition 6(n), which required Barnes to submit [her] person, vehicle, residence, property, personal effects, computers, and recordable media to search at any time with or without a warrant, and with or without reasonable cause, when required by [a probation officer] or law enforcement officer;" and condition 7(d), which required her to attend and complete anti-theft therapy as well as cognitive behavioral counseling if so directed by her probation officer.

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1 A *Harvey* waiver allows the sentencing judge to consider the defendant's prior criminal history, if any, and the factual background of the cause, including any dismissed charges. (See *People v. Harvey* (l979) 25 Cal.3d 754, 757-759 (*Harvey)*.)

2 Condition 6(m) allows Barnes to travel to or reside in Los Angeles and the court specified that probation would be transferred to Los Angeles.

At the sentencing hearing, Barnes asserted there was no nexus or evidence to support inclusion of the Fourth Amendment waiver or the cognitive behavioral counseling condition. The probation officer responded that the conditions were warranted because Barnes had committed a felony and had exhibited a serious lapse of judgment when she defrauded and stole from a mental health program for at-risk children. The court explained the cognitive therapy condition was only "if directed" by the probation officer, the probation officer would be in the best position to determine precisely what was necessary for Barnes's rehabilitation, and probation officers are typically given a lot of deference but cannot act arbitrarily. Therefore, the court declined to strike the contested conditions. The court sentenced Barnes to formal probation for a term of five years, including the contested probation conditions, and also required her to pay back the $45,000 in restitution to MHS.

Barnes appeals.

DISCUSSION

I. *General Principles*

The trial court has broad discretion to determine the conditions necessary to serve the two primary goals of probation: promoting rehabilitation and protecting the safety of the public. (*People v. Moran* (2016) 1 Cal.5th 398, 402-403 (*Moran*); *People v. Carbajal* (1995) 10 Cal.4th 1114, 1120.) If the defendant finds these conditions to be too onerous, he or she may forgo probation and accept the alternative sentence. (*Moran*, at p. 403.) The court's discretion is not without limits, though; conditions regulating otherwise legal conduct must be reasonably related to past or future criminality and conditions that

restrict the exercise of constitutional rights must be narrowly tailored to the purpose of the condition. (*Lent, supra*, 15 Cal.3d at p. 486; *People v. Olguin* (2008) 45 Cal.4th 375, 384 (*Olguin*).)

We review challenges to the reasonableness of conditions imposed by the sentencing court for an abuse of discretion. (*Olguin, supra*, 45 Cal.4th at p. 379.) Under the test set forth in *Lent*, the court does not abuse this discretion in imposing a given probation condition unless the condition "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, *and* (3) requires or forbids conduct which is not reasonably related to future criminality." (*Lent, supra*, 15 Cal.3d at p. 486, italics added.) We review challenges to probation conditions as constitutionally overbroad de novo. (*People v. Appleton* (2016) 245 Cal.App.4th 717, 723 (*Appleton*).)

A defendant that believes a proposed probation condition is unreasonable or overbroad must timely object to the condition in the trial court, thereby giving the parties an opportunity to provide argument or evidence concerning the need for the condition and the court an opportunity to modify the condition if necessary in light of such argument and evidence. (*People v. Welch* (1993) 5 Cal.4th 228, 234-235 (*Welch*).) A defendant that fails to do so typically forfeits any such argument on appeal. (*Ibid*.) Despite this general rule, a defendant may raise a "facial" constitutional challenge to a probation condition for the first time on appeal if the challenge involves a pure question of law that can be resolved without any reference to the trial court record. (*Id*. at p. 235; *In re Sheena K.* (2007) 40 Cal.4th 875, 887-889 (*Sheena K.*).) This exception does not

apply to reasonableness challenges under *Lent* because *Lent* requires the court to determine whether the condition relates to the defendant's previous criminal activity, thereby requiring the court to review the record with regard to the defendant's previous crimes. (*Welch,* at p. 237.)

II. *The Fourth Amendment Waiver*

Barnes contends condition 6(n), the Fourth Amendment waiver, is invalid under *Lent* and unconstitutionally overbroad, both generally and specifically with respect to the inclusion of computers and recordable media.[3] The People assert Barnes forfeited her arguments regarding the inclusion of electronic devices as well as her constitutional arguments by failing to object specifically on those grounds at sentencing, and the condition is reasonable and appropriately tailored in any event.

A. *The Fourth Amendment Waiver Is Not Unreasonable*

We turn first to Barnes's assertion the condition as a whole is invalid under *Lent*. Barnes argues neither her social history nor the facts underlying her conviction establish

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3 Several cases addressing the constitutionality probation conditions permitting the warrantless search of electronic devices are currently pending review in the Supreme Court. (See, e.g., *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923; *In re Patrick F*. (2015) 242 Cal.App.4th 104, review granted Feb. 17, 2016, S231428; *In re Alejandro R.* (2015) 243 Cal.App.4th 556, review granted March 9, 2016, S232240; *In re Mark C.* (2016) 244 Cal.App.4th 520, review granted April 13, 2016, S232849; *In re A.S.* (2016) 245 Cal.App.4th 758, review granted May 25, 2016, S233932; *In re J.E.* (2016) 1 Cal.App.5th 795, review granted Oct. 12, 2016, S236628; *People v. Nachbar* (2016) 3 Cal.App.5th 1122 (*Nachbar*), review granted Dec. 14, 2016, S238210.)

the Fourth Amendment waiver relates to her past crimes or the probation officer's ability to deter future criminality. We disagree.

A Fourth Amendment waiver is a common probation condition aimed at deterring further offenses and monitoring the probationer's compliance with the terms of probation. (*People v. Robles* (2000) 23 Cal.4th 789, 795.) Here, Barnes was involved in a fairly sophisticated scheme to embezzle significant amounts of money from a public program that provided services to minors with mental health conditions. While Barnes claims she did not know the extent of the illegal operation Wilson had undertaken, she did plead guilty to grand theft of an amount over $950 and the plea agreement contained a *Harvey* waiver such that the court could consider the entire factual background in sentencing as well as a stipulation to the facts set forth at the preliminary hearing. Moreover, the probation department concluded there was "no question she was aware of the fraudulent funds being placed into her account based on the large sum."

Barnes relies on two cases in which the appellate court struck Fourth Amendment waivers as unreasonable under *Lent*, but neither is applicable here. (See *People v. Keller* (1978) 76 Cal.App.3d 827 (*Keller*), disapproved of on another ground in *Welch, supra,* 5 Cal.4th at p. 233; *People v. Burton* (1981) 117 Cal.App.3d 382 (*Burton*).) In *Keller*, the underlying crime was petty theft of a single ballpoint pen, a crime far less significant than the crimes at issue in the present case, and in *Burton*, the underlying crime was an assault which—although admittedly more serious—is also distinguishable as it did not involve ongoing fraudulent and deceitful conduct. (See *Keller,* at p. 830, *Burton,* at p. 385.) Moreover, *Burton* follows the reasoning in *Keller*, and this court has since repudiated that

reasoning, stating the *Keller* decision went "far beyond the *Lent* test" and was "inconsistent with subsequent case authority from both the United States and California Supreme Courts." (*People v. Balestra* (1999) 76 Cal.App.4th 57, 66-68 (*Balestra*); see also *Olguin, supra,* 45 Cal.4th at p. 381 [citing *Balestra* with approval].)

Barnes also asserts the condition is not reasonable because a search of her home or purse would not reveal fraudulent criminal acts. To the contrary, the discovery of a check for a large sum of money in her possession, for example, would suggest a need for further investigation and thus would provide valuable information to the probation officer in ensuring Barnes refrains from further criminal activity. In light of the sophisticated criminal embezzlement scheme and amount of money at issue, we conclude the Fourth Amendment waiver is sufficiently related to the probation officer's ability to ensure Barnes refrains from similar types of criminal conduct. (*Lent, supra,* 15 Cal.3d at p. 486; *Olguin, supra,* 45 Cal.4th at p. 384.) Therefore, the court did not abuse its discretion pursuant to *Lent* by imposing the condition. (*Lent,* at p. 486.)

In the alternative, Barnes asserts the inclusion of computers and recordable media in the Fourth Amendment waiver was unreasonable under *Lent*. The People argue Barnes forfeited this argument by failing to address electronic devices, specifically, at the sentencing hearing. A defendant typically does forfeit an argument by failing to raise it below. (See *Welch, supra,* 5 Cal.4th at pp. 234-235.) Here, though, Barnes did raise a more general objection regarding the search provision. That objection was sufficient to put the court and parties on notice that she did not believe there was a sufficient basis for the imposition of the condition, which included computers and recordable media, and

Barnes is entitled to elaborate on one or more specific aspect of that objection on appeal. (See *Welch*, at pp. 234-235 [purpose of forfeiture rule is to bring errors to attention of the trial court so they may be addressed]; *Sheena K., supra*, 40 Cal.4th at p. 881 [same].)

Regardless, we would also reject Barnes's argument on the merits for largely the same reasons as set forth with respect to the Fourth Amendment waiver more generally. While there is no direct evidence Barnes herself used an electronic device in connection with the crime at issue, Wilson did use a computer to create the fraudulent invoices that led to MHS issuing fraudulent checks to Barnes. Further, it would be reasonable to assume that Barnes, or an accomplice, would use a computer in a similar manner in any future fraud or embezzlement crimes Barnes may commit, such that searches of computers and recordable media would aid the probation officer in deterring such future criminal conduct. (*People v. Ebertowski* (2014) 228 Cal.App.4th 1170, 1176 (*Ebertowski*) [electronic search and social media password provision reasonably related to rehabilitation insofar as it allowed probation officer to monitor defendant's gang affiliations]; cf. *In re Erica R.* (2015) 240 Cal.App.4th 907, 912-913 [finding electronic search condition unrelated to rehabilitation where *nothing* in the record connecting the underlying crime to the use of electronic devices].)[4] Thus, it was reasonable and was not an abuse of discretion for the court to include computers and recordable media in the search conditions. (See *Lent, supra*, 15 Cal.3d at p. 486.)

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4 The cases Barnes cites are factually dissimilar as neither involved financial crimes of fraud or deceit. (See *In re J.B.* (2015) 242 Cal.App.4th 749, 752 [defendant pleaded guilty to petty theft after stealing a shirt from a department store]; *People v. Bryant* (2017) 10 Cal.App.5th 396 [defendant pleaded guilty to carrying a concealed firearm].)

B. *The Fourth Amendment Waiver Is Not Overbroad*

Turning to Barnes's overbreadth arguments, we first address the People's assertion Barnes has forfeited such claims by failing to object specifically on constitutional grounds. Barnes concedes that she did not object on overbreadth grounds, but argues her contentions fall under the exception articulated in *Sheena K.* That exception, however, applies only when the argument at issue is purely a facial challenge, such that the court can address it without any reference to the record. (*Sheena K., supra*, 40 Cal.4th at pp. 887-889.)

Here, Barnes argues the provision is not narrowly tailored to the governmental interest of preventing her from engaging in future criminality, but an analysis of that position necessarily requires an analysis of the factual basis of the crimes at issue, including whether they involved the use of an electronic device. Further, Barnes asserts her phone contains a record of nearly every aspect of her life but, because she did not object to the electronic search conditions on constitutional grounds, the record is devoid of any information regarding the type of phone or other media devices she has and what type of private information she has on any such devices. As a result, the record is insufficient to permit this court to adequately address the constitutionality of the provision on appeal, and Barnes's constitutional arguments do not fall under the exception articulated in *Sheena K.* (See *Sheena K., supra*, 40 Cal.4th at p. 889.)

Regardless, even if we were to reach the merits of Barnes's contention that the condition is unconstitutionally overbroad, we would reject it. As discussed, *ante*, Barnes

was involved in a sophisticated criminal endeavor resulting in the theft of large sums of money, including at least $45,000 of which was directly related to checks made payable to Barnes. Further, the crimes involved the use of a computer to create fraudulent invoices, at least one of which related directly to checks deposited in Barnes's account. Having been exposed to and involved in an embezzlement operation of this nature, there was at least some risk that Barnes would become involved in a similar criminal endeavor in the future. Therefore, the search provision, including computers and recordable media, is narrowly tailored to the legitimate interest of deterring Barnes from committing additional crimes of a similar nature. (See *Olguin, supra*, 45 Cal.4th at p. 384; *Appleton, supra*, 245 Cal.App.4th at p. 723.)

To the extent Barnes asserts that a review of the record is not necessary because electronic search provisions are unconstitutionally overbroad regardless of the facts of the case, we reject that position as well. Barnes points to a number of cases where courts have found such provisions to be constitutionally overbroad. (See *Appleton, supra*, 245 Cal.App.4th at p. 727; *In re P.O.* (2016) 246 Cal.App.4th 288, 298.) At the same time, though, a number of courts have also upheld similar probation conditions. (See, e.g., *Nachbar, supra*, 3 Cal.App.5th at pp. 1125, 1130 [upholding a similar provision where crime involved solicitation of a minor using an electronic device]; *Ebertowski, supra*, 228 Cal.App.4th at p. 1176 [upholding an electronic search condition based on need to monitor gang affiliations]; *People v. Trujillo* (2017) 15 Cal.App.5th 574 [discussing a number of the relevant cases and upholding an electronic search condition].) In conducting the associated constitutional overbreadth analysis, the law requires us to focus

on the particular facts of the case before us. (See *People v. Mitchell* (2012) 209 Cal.App.4th 1364, 1378.) As discussed, here, the crime Barnes pleaded guilty to involved the use of computers in a sophisticated embezzlement scheme and, thus, the electronics search condition is narrowly tailored to the legitimate governmental interest of ensuring Barnes does not commit additional similar crimes.

III. *The Counseling Condition*

Condition 7(d) requires Barnes to attend and successfully complete anti-theft counseling and cognitive behavioral counseling if directed by her probation officer. Barnes did not contest the anti-theft counseling portion of the provision at sentencing, and does not do so on appeal. Her objection is limited to the cognitive behavioral therapy portion of the condition, which she asserts is unreasonable under *Lent* because the probation department found she did not have any psychological problems, nor does anything in the record indicate she has any mental health issues.

As Barnes concedes, the requirement that she undergo anti-theft counseling is appropriate given her theft of over $45,000. At sentencing, the superior court indicated it also included the cognitive behavioral counseling provision, at the discretion of Barnes's probation officer, because the probation officer was in the best position to determine if Barnes needed additional counseling upon further evaluation. Given the seriousness of the crime, and the underlying deceit, we agree it was reasonable for the court to give the probation officer discretion to require additional counseling based on Barnes's demonstrated progress throughout the probationary period, including but not limited to her progress in anti-theft counseling. (See *People v. Malago* (2017) 8 Cal.App.5th 1301,

1307-1308 [finding condition requiring completion of residential treatment program if directed by probation officer appropriate].) As in any case, if the probation officer acts arbitrarily or capriciously, Barnes can seek recourse with the court to modify or strike the provision. (See Pen. Code § 1203.2, subd. (b)(1); § 1203.3, subd. (a); *Olguin, supra,* 45 Cal.4th at pp. 382-383 [condition requiring probationer to notify probation officer of the presence of pets does not permit officer to irrationally or capriciously exclude any such pets].) Therefore, we conclude the court did not abuse its discretion by including the cognitive behavioral counseling provision.

Barnes also contends the counseling provision is unconstitutionally overbroad. As with the electronics search condition, the People contend Barnes forfeited this argument by failing to object on constitutional grounds at the sentencing hearing and Barnes asserts her argument falls under the exception set forth in *Sheena K.* Barnes's challenge to the counseling provision similarly depends on the facts of the case—specifically, whether there is any indication Barnes is in need of additional counseling—and, therefore, also does not fall under the *Sheena K.* exception. (See, *Sheena K., supra*, 40 Cal.4th at p. 889.)

In any event, even if we were to address the merits, we would not conclude the condition is unconstitutionally overbroad. Barnes asserts the condition intrudes on her constitutional right to refuse treatment and gives the probation officer too much discretion as to what type of therapy she must attend. The provision is clear, though, as to what type of counseling the probation officer may direct Barnes to complete—cognitive behavioral counseling; and it is within a probation officer's authority to ensure

compliance with the terms of probation, including discretionary terms such as these. (See *People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240-1241 [a court may give a probation officer discretion to ensure compliance with specific probation conditions].) Further, Barnes has not articulated any legitimate basis for actually refusing additional counseling and, in light of the severity and deceitful nature of the crime at issue, the requirement is narrowly tailored to the legitimate objective of rehabilitation. (See *In re Luis F.* (2009) 177 Cal.App.4th 176, 192 [concluding a condition requiring a minor to take certain medications as prescribed was sufficiently related to deterring future criminality and was not unconstitutionally overbroad based on a hypothetical possibility that the minor may wish to refuse such medications], cf. *People v. Petty* (2013) 213 Cal.App.4th 1410, 1419-1420 [probation condition requiring defendant to take medication overbroad where defendant raised specific concerns regarding medication and condition delegated authority to unspecified "mental health worker"].)

Therefore, we conclude the superior court did not err by including the counseling condition in the terms of Barnes's probation.

IV. *The Travel Condition*

Lastly, Barnes asserts the travel condition is unconstitutionally overbroad because it unjustifiably infringes on her constitutional rights to travel and associate freely. As with the other conditions, the People assert Barnes forfeited this contention and Barnes asserts she did not because if falls under the exception set forth in *Sheena K.* As Barnes herself concedes, though, this contention also requires an examination of the record—and specifically, whether the record indicates a relationship between the crime and Barnes's

ability to move or travel—and therefore also does not fall under the *Sheena K.* exception. (See *Sheena K., supra*, 40 Cal.4th at p. 889.)

Regardless, even if we were to address the merits, we would not conclude the condition is unconstitutionally overbroad. Barnes was living in Los Angeles when she received fraudulently stolen funds from an organization based in San Diego. Even if Barnes did not actually travel to San Diego in connection with the crime, the facts suggest there is a risk that Barnes would commit future crimes in other localities if permitted to travel freely. Further, the terms of her probation required her to pay back over $45,000 in restitution to MHS. Unnecessary travel expenditures could impede her ability to repay the large sum of restitution and thus her compliance with that term of her probation. Finally, the condition does not preclude Barnes from traveling altogether, but rather simply requires her to obtain permission before doing so. Therefore, the requirement that Barnes obtain her probation officer's consent before leaving San Diego County and obtain the court's and her probation officer's written consent before moving out of the state, is narrowly tailored to the legitimate government interests of ensuring she complies with the terms of her probation and deterring future criminality. (See *People v. O'Neil* (2008) 165 Cal.App.4th 1351, 1355 (*O'Neil*) [condition may impinge on a

constitutional right where tailored to the purposes of rehabilitation and deterring future criminality]; *People v. Lopez* (1998) 66 Cal.App.4th 615, 624-626 [same].)[5]

We also reject Barnes's assertion the condition gives her probation officer too much discretion. The California Supreme Court has established that probation officers do not have unlimited discretion with respect to such conditions, and instead have an inherent obligation to act reasonably in the supervision of probationers and in applying the associated conditions of their probation. (*Olguin*, *supra*, 45 Cal.4th at pp. 380-382.) Barnes's reliance on cases decided before *Olguin* is therefore misplaced. (See, e.g., *People v. Bauer* (1989) 211 Cal.App.3d 937, 944 (*Bauer*); *In re White* (1979) 97 Cal.App.3d 141, 148; *United States v. Wheeler* (1920) 254 U.S. 281.) Further, the court in *Bauer*, one of the primary cases Barnes relies on, did not conclude the residence approval condition at issue was invalid in any context, but instead relied primarily on an analysis of the specific facts of the case and the reasonableness test set forth in *Lent*. (*Ibid.*, see also *People v. Stapleton* (2017) 9 Cal.App.5th 989 [upholding a similar condition and distinguishing *Bauer* based on *Olguin*].) To the contrary here, Barnes does not assert the condition is unreasonable under *Lent* based on the specific facts of her case, and could not do so as she forfeited any such contention by failing to raise it below.

We therefore conclude the superior court did not err by including the travel condition in the terms of Barnes's probation.

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5 The other cases Barnes cites are factually distinguishable. (See *People v. Soto* (2016) 245 Cal.App.4th 1219 [involving a conviction for driving under the influence of alcohol]; *O'Neil, supra,* 165 Cal.App.4th 1351 [concerning a condition forbidding the defendant from associating with persons designated by his probation officer].)

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

O'ROURKE, J.

DATO, J.